IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.499 OF 2007
IN
NOTICE OF MOTION NO.3512 OF 2005
IN
SUIT NO.1614 OF 2004

Zarine Shapur Rao .. Appellant
V/s
Mr.Noshir Ardeshir Soonawala & Ors. .. Respondents

Mr.R.A.Dada, Sr.Advocate with Mr.M.P.S.Rao i/by M/s.Little & Co. for the Appellant.

Mr.N.A.Shah, Sr.Advocate with Mr.G.R.Joshi and Mr.B.H.Aulie i/by M/s.Mulla & Mulla for Respondent Nos.1 & 2.

Ms.Deepa Chavan i/by M/s.Govind Desai & Associates for Respondent No.3.

CORAM : DR.S.RADHAKRISHNAN, &
ANOOP V.MOHTA, JJ.

DATE : 27th November, 2007.

P.C.:

1. Heard the learned Senior Counsel for the parties. Perused the plaint in original LE & C Suit No.69/79 of 1997. In paragraph No.14, the Respondents-Plaintiffs have very categorically averred as under:-

> "14. The Planitiffs say that the suit premises are situated at Bombay. The gratuitous licence was granted by the deceased to the original Defendant No.1 to stay in the suit premises in Bombay. the Plaintiffs say that this Hon'ble Court will have exclusive jurisdiction to try and entertain this suit. The suit is between Licensor and Licensee as envisaged under the provisions of Section 41 of the Presidency Small Causes Court Act. Thus this Hon'ble Court has alone jurisdiction to try and entertain this suit. As the licence has been terminated the cause of action has arisen in favour of the plaintiffs."

2. We have also perused Full Bench Judgment of this Court dated 10th July, 2007 passed in Writ Petition No.148/2004 and Writ Petition No.561/2005, wherein, the Full Bench of this Court has taken a categorical view that in case of gratuitous licence the only Court which will have jurisdiction will be the Court of Small Causes and not this Court.

3. Mr.Shah, the learned Sr.Counsel read the entire plaint and tried to contend that though there are no pleadings, this is a suit against rank tresspassers. On the contrary, the pleadings in paragraph No.14 of the Plaint make it abundantly clear that this suit is filed under Section 41 of the Presidency Small Causes Court Act on the ground that the Appellant is a gratuitous licensee.

4. It is therefore absolutely clear that the suit is based on a gratuitous licence, and in view of the aforesaid Full Bench Judgment, this Court has absolutely no jurisdiction.

5. In view thereof, Appeal is allowed and the impugned order dated 22.06.2007 passed in the Notice of Motion No.3512/2005 is set aside solely on the ground that this Court lacks jurisdiction to entertain the above suit.

Ad-interim order stands vacated. We make it clear that we have not gone into the merits and demerits of the matter.

6. The Plaint in LE & C Suit No.69/79 of 1997 be returned to the Plaintiffs for being presented at the Court of Small Causes at Mumbai.

7. All the contentions of both the parties are kept expressly open except that of jurisdiction.

(ANOOP V.MOHTA, J.) **(DR.S.RADHAKRISHNAN, J.)**